

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Magnolia, Arkansas and Oil City, Louisiana))

MB Docket No. 02-199
RM-10514

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Marlene H. Dortch, Office of the Secretary
Attn: Chief, Audio Division
Media Bureau

REPLY TO OPPOSITION TO MOTION TO STRIKE

1. Cumulus Licensing Corp., transferee of Station KVMA-FM and Columbia Broadcasting Co., Inc., licensee of Station KVMA-FM, (together "Cumulus"), by their counsel, and pursuant to Sections 1.45 and 1.429 of the Commission's Rules, hereby reply to the Opposition of Access.1 Louisiana Holding Company LLC ("Access.1") to Cumulus' Motion to Strike filed in the above-captioned proceeding.

2. On September 23, 2003, Access.1 filed an unauthorized and unacceptable Supplement to its Petition for Reconsideration in this proceeding, in violation of the Commission's Rules. On October 1, 2003, Cumulus submitted a Motion to Strike the unauthorized pleading. On October 15, 2003, Access.1 opposed Cumulus' Motion to Strike the unauthorized pleading, and attempted to cure the procedural defect in its Supplement by submitting a belated motion for its acceptance. However, a belated motion can not cure the substantive defects infecting both the Petition for Reconsideration and the Supplement, because there is no case law, rule, or policy that supports overturning the Commission's Report and Order in this case. This is a simple allotment proceeding clearly falling within established precedent, and Cumulus has at all times acted openly and with candor. Access.1's accusations to

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the contrary are nothing more than “strike” pleadings designed to delay the licensing of a potentially competitive radio station in the Shreveport market.

3. In the *Report and Order* in this proceeding,¹ the Commission deleted Channel 300C1 at Magnolia, Arkansas and allotted Channel 300C2 to Oil City, Louisiana as that community’s first local aural transmission service, and modified the license of Station KVMA-FM to reflect the change of community. Because Oil City is outside the Shreveport Urbanized Area and the proposed signal covered less than 50 percent of the Shreveport Urbanized Area, it was not necessary to submit a Tuck² showing to demonstrate Oil City’s independence from Shreveport. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

4. Access.1 argued that Cumulus’ eventual goal was to relocate the station to a location from which it could cover Shreveport. The Commission dismissed this argument, stating that “those issues are properly raised when an application for an Oil City station is submitted.” *Report and Order* at ¶ 3. However, Access.1 continues to argue this issue at the allotment stage. Apparently, Access.1 seems to believe that its success or failure on reconsideration hinges on whether its argument is correctly characterized as “speculation.”³ However, a station’s eventual transmitter location is not considered in allotment proceedings. See *Warrenton, North Carolina et. al.*, 13 FCC Rcd 13889 (1998); *Oraibi and Leupp, Arizona*, 14 FCC Rcd 13547 (1998). For this reason, subsequent events are wholly irrelevant to a determination in this allotment proceeding and do not make the Commission’s decision subject to reconsideration.

¹ *Magnolia, Arkansas and Oil City, Louisiana*, 18 FCC Rcd 8542 (2003).

² *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

³ Access.1’s latest attempt to argue this point is absurd. It argues that its move-in theory was not speculation because it was subsequently proven true. Opposition at 3. Under this test, a gambler convicted of participating in an illegal lottery would be exonerated if his number actually came in. The FCC should disregard this argument as unfounded and illogical.

5. On June 10, 2003, Cumulus filed an application to implement the *Report and Order* in this proceeding. While complying fully with the licensee's obligation to serve Oil City, the application proposes to place a signal over the Shreveport Urbanized area. Cumulus has previously demonstrated that it fully complies with the Commission's policy concerning the relocation of stations from rural to urban areas. Compliance with that policy is achieved through an analysis of the *Tuck* factors. The Commission considers the extent to which the station will provide service to the entire Urbanized Area, the relative populations and proximity of the suburban and central city, and, most importantly, the independence of the suburban community. *Id.* Although Cumulus previously provided sufficient information in this proceeding from which to judge that Oil City is independent from Shreveport, that information was not initially presented in the *Tuck* format. Cumulus subsequently organized the information in the *Tuck* format and submitted it, both in the application proceeding and in this allotment proceeding. Under the *Tuck* factors, Oil City is clearly independent from Shreveport, and Access.1 has never contested the showing. Accordingly, whether considered in the application or the allotment context, the relocation of KVMA-FM from Magnolia to its proposed transmitter location for Oil City fully complies with the Commission's rules and policies.

6. At all times, Cumulus has acted in accordance with the Commission's rules and policies, and have openly and forthrightly advocated its position. Yet Access.1 repeatedly accuses Cumulus of lack of candor. Access.1 accuses Cumulus and Columbia of engaging in a "scheme" to achieve by subterfuge an outcome they could not legitimately pursue. That accusation is demonstrably false, since the outcome – the ultimate location of KVMA-FM – complies in all respects with Commission rules and policies. Access.1 also argues that Cumulus and Columbia had a duty to inform the Commission of the filing (with the Commission) of the

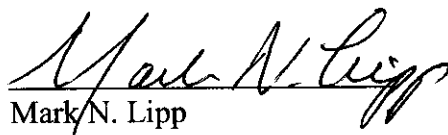
KVMA-FM application on June 10, 2003. But such a “duty” could not possibly exist, when the Commission had just stated in the *Report and Order* that the ultimate location of KVMA-FM was irrelevant in the allotment context. *Report and Order* at ¶ 3. According to the Commission, such concerns are properly raised in the application context. *Id.* Access.1 is simply grasping at straws.

7. For the foregoing reasons, the Commission should promptly issue a decision affirming the *Report and Order* in this proceeding. Access.1 cites no case law, regulation, or policy that would cause the Commission to revisit its decision. Even when combined with the subsequent application proceeding (which the Commission correctly excluded from consideration here) the relocation of KVMA-FM in this proceeding complies with the case law and the Commission’s policies in that regard.

Respectfully submitted,

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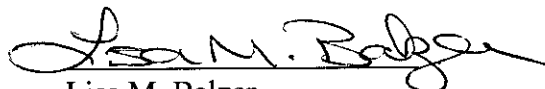
October 31, 2003

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, LLP., do hereby certify that I have on this 31st day of October, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply to Opposition to Motion to Strike" to the following:

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